IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1165 OF 1992

Union of India ..Appellants

versus

M/s. Manikgarh Cement ..Respondents

Mr. A. N. Samant for the Appellants.

None for the Respondents.

CORAM: D.G.DESHPANDE,J.

DATED: 4TH MAY, 2005

ORAL ORDER :

1. Heard Mr. Samant learned counsel for the appellants. Nobody for the Respondents, though served.

2. This Appeal is filed by the Union of India - Appellants against the order of the RACT, Mumbai dated 12.11.1992.

3. Mr. Samant raised only three contentions. Firstly, according to him the RR issued by the Railway was "said to contain". The second contention was that the

Tribunal awarded interest at the rate of 12% per annum and according to him it should be 9% per annum in view of the Judgment of this Court reported in **2005(1) Mh.L.J. 165 Maharashtra State Electricity Board vs. Union of India.** It was a claim against the Railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed same judgment earlier, therefore the rate of interest is required to be reduced to 9% per annum.

4. Thirdly, he contended that the claim was filed by the original claimants against two railways i.e. South Central Railway and Central Railway.

5. So far as contention of Mr. Samant of RR with the endorsement "said to contain", the same is required to be rejected.

6. Three consignments of goods in sound condition were booked but the same were delivered at destination in damaged condition. Damages were assessed and Assessment Certificates were issued. Appellants contested the claim and the main point of defence put up by the Railways is that even though the appellants were not

liable they made few payments for maintaining cordial relations. The Tribunal framed 3 issues but the issue regarding RR "said to contain" was not at all framed. The Tribunal found that there was total negligence of the railway. Therefore, in the circumstances the defence of "said to contain" is not available to the appellants.

7. So far as interest part is concerned, contention of Mr. Samant is required to be accepted in view of the judgment of this court, as stated above.

8. As regards liability of both the railways, if at all there is liability of the Union of India, then Decree against one of the railways would be proper and sufficient. In may such appeals of the Union of India, I have accepted this contention, therefore, impugned judgment will have to be maintained against General Manager, Central Railway only and order against South Central Railway will have to be set aside.

9. In the result, I pass the following order:

ORDER

. The appeal is partly allowed.

. There shall be liability of General Manager, Central Railway only and not of South Central Railway.

. The principal amount awarded will carry interest at the rate of 9% per annum from the date of application till realisation or till date of payment or deposit with proportionate costs.

. Amount that is found in excess after the aforesaid calculations shall be returned to the appellants. Respondents will be permitted to withdraw the amount as per the calculations.

. No order as to costs.

4.5.2005 (D.G. DESHPANDE,J.)